

Circuit Court for Prince George's County
Case No. CAL20-15284

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1487

September Term, 2021

DARRYL BACCUS

v.

PRINCE GEORGE'S COUNTY BOARD OF
EDUCATION

Berger,
Friedman,
Albright,

JJ.

Opinion by Friedman, J.

Filed: August 3, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Darryl Baccus was terminated as a security assistant for the Board of Education of Prince George’s County, which we refer to as the Local Board, for inappropriate conduct with female students. Baccus unsuccessfully appealed his termination to both the Maryland State Board of Education, and the Circuit Court for Prince George’s County. For the reasons stated below, we affirm.

BACKGROUND

Factual Background

Baccus was a security assistant employed by the Local Board for six years. As relevant here, Prince George’s County Public Schools (PGCPS) investigated three reports of inappropriate conduct with female students during Baccus’s tenure. The third incident prompted Baccus’s termination.¹

In the first incident, a middle school student reported that Baccus placed his arm around her waist in a side hug and commented “you are too pretty to be this upset.” Upon investigation by PGCPS, Baccus admitted to the physical contact with the student and making the comment. PGCPS’ investigation concluded that while there was no dispute that Baccus made the comment and the contact, it did not rise to the level of a crime. The investigator determined that Baccus acted unprofessionally in making the inappropriate

¹ While the termination letter also contains information about another incident on March 12, 2015, where Baccus responded to an altercation between two students, PGCPS found that Baccus’s actions in that incident were appropriate. As a result, the Local Board did not rely on it in upholding Baccus’s termination, and we do not further consider it here.

contact and the inappropriate comment. A supervisor discussed the incident with Baccus and counseled him on how to appropriately interact with students.

In the second incident, a high school student reported two comments Baccus allegedly made to her about a tattoo on her chest on two separate days: (1) he commented “nobody else is getting that but me” while she was obtaining a bus pass in the morning, and (2) he commented “one day I am going to see that whole tattoo on your chest” during her lunch period. Baccus denied making the statements. The investigation concluded that the student was credible but issued a “not sustained” finding.² The investigator counseled Baccus regarding the matter and how to remain professional with students.

In the third incident, a high school student complained that Baccus made several inappropriate remarks and grabbed her bra strap. Specifically, the student reported that Baccus inquired about what he believed to be a “passion mark” or “hickey” on her neck. She responded that it was a birthmark, and he commented, “I know young ladies, they just have this birthmark, and then they end up giving birth.” The student also reported that when Baccus saw her interacting with a boy, Baccus said that he would be “very upset, jealous, if [the student] messed up her life because she did not get [her] education.” Baccus admitted to making the comments but denied touching her bra strap. Upon investigation, a “sustained” finding was issued.

² During Baccus’s hearing before the PGCPS Office of Appeals, the investigator testified that a “not sustained” finding occurs when the student and the employee have differing accounts, and there are no witnesses to break the tie.

Procedural Background

PGCPS held a pre-termination hearing with Baccus. As to the first incident, Baccus admitted to giving the student a side hug and stating that she was “too pretty to be this upset.” Baccus also admitted, as to the third incident, to making the inappropriate remarks to the student regarding the mark on the student’s neck and his jealousy. The supervisor and investigator testified that they had counseled Baccus regarding his interactions with students prior to the third incident. The investigator also testified that annual trainings provided security assistants with instructions on how to handle situations that could result in student allegations of inappropriate behavior. Based on the information presented at the hearing, PGCPS informed Baccus by letter that he had violated three provisions of the PGCPS Regulations for Supporting Personnel and, as a result, his employment was immediately terminated.³

Baccus subsequently engaged in a series of appeals. Baccus filed an appeal with the Chief Executive Officer of PGCPS, Monica Goldson, pursuant to the PGCPS Regulations for Supporting Personnel. Goldson referred the matter to the PGCPS Office of Appeals. A hearing examiner conducted two days of hearings but left the employ of the PGCPS Office of Appeals prior to issuing findings. Then, a substituted hearing examiner took over the matter. At the conclusion of the hearing process, PGCPS upheld Baccus’s termination.

³ According to the letter, Baccus’s violations included: (1) incompetence or other similar unsatisfactory performance; (2) violation of administrative regulations or department rules; and (3) any conduct which reflects unfavorably on PGCPS as an employer.

Baccus then filed appeals with the Local Board and with the Maryland State Board of Education, and each upheld his termination. Baccus next filed a petition for judicial review in the Circuit Court for Prince George’s County. The circuit court affirmed, finding the State Board’s decision was supported by substantial evidence and there was no error of law committed in making that decision. Baccus then timely filed this appeal.

DISCUSSION

When we review the decision of an administrative agency, “we reevaluate the decision of the agency, not the decision of the lower court.” *Venter v. Bd. of Educ.*, 185 Md. App. 648, 664 (2009) (cleaned up). Thus, we are tasked with determining whether the State Board erred. “The overarching goal of judicial review of agency decisions is to determine whether the agency’s decision was made in accordance with the law or whether it is arbitrary, illegal, and capricious.” *Sugarloaf Citizens Ass’n v. Frederick County Bd. of Appeals*, 227 Md. App. 536, 546 (2016) (cleaned up). Further, we review the agency’s decision in the light most favorable to the agency because the agency’s decision is *prima facie* correct and entitled to a presumption of validity. *Id.*

“[T]he State Board generally has the last word on matters concerning the public school system.” *Mayberry v. Bd. of Educ. of Anne Arundel County*, 131 Md. App. 686, 700 (2000). Thus, we need only determine if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and if the administrative decision is premised upon an erroneous conclusion of law. *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005). Substantial evidence is such relevant evidence that a “reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.*

(cleaned up). We defer to the agency’s factfinding if it is supported by substantial evidence in the record. *Id.* Our task on review is not to substitute our judgment for the expertise of the administrative agency. *Id.* at 571-572.

Baccus raises numerous arguments which we re-organize and distill into two issues: *First*, we address whether the substitution of one hearing examiner for another was improper. *Next*, we discuss whether there is substantial evidence to support the State Board’s findings and conclusions.⁴

I. WHETHER THE SUBSTITUTION OF THE HEARING EXAMINER WAS IMPROPER

Baccus asserts that it was improper for one hearing examiner to be substituted for another. We recap the facts. When Baccus appealed his termination to the CEO of PGCP, Monica Goldson, she referred the matter to a hearing examiner within the PGCP Office of Appeals. The hearing examiner conducted two days of hearings, but before rendering a recommended decision to Goldson, the hearing examiner left the employ of the PGCP Office of Appeals. A new hearing examiner was assigned to review the transcript and exhibits and render a recommended decision. This substituted hearing examiner issued a Findings of Fact, Conclusions of Law, and Recommendation (which we call the “Initial

⁴ Baccus makes numerous other arguments based on his critique of the way in which the investigator’s report, the termination letter, the Initial Report, the Supplemental Report, and the State Board’s opinion were written, including allegations of mistakes about individual’s job titles, inaccurate word choice, providing only summaries of witness testimony, and insufficient linkages between the facts proven and the legal grounds for the regulations violated. As we see it, these arguments boil down to the same central question: whether the findings and conclusions reached are supported by substantial evidence. *Maryland Aviation Admin.*, 386 Md. at 571.

Report”), recommending that Baccus’s termination should be upheld. Goldson adopted the substituted hearing examiner’s recommendation and upheld Baccus’s termination.

Baccus appealed Goldson’s decision to the Local Board arguing that the substituted hearing examiner did not consider the testimony that Baccus presented during the first of the two days of hearings.⁵ To correct the omission, the substituted hearing examiner issued a Supplemental Findings of Fact, Conclusions of Law, and Recommendation (which we call the “Supplemental Report”) that included a review of the first day of hearings and again recommended that Baccus’s termination should be upheld.⁶ Goldson again adopted the substituted hearing examiner’s recommendation and upheld Baccus’s termination. The Local Board issued a decision upholding Baccus’s termination. Next, Baccus appealed the Local Board’s decision to the State Board.

The State Board observed that there is nothing fundamentally illegal or unfair about substituting a hearing examiner. Moreover, since neither the PGCPS nor the Local Board had a set procedure governing the substitution of hearing examiners, the State Board explained that the most closely analogous law from the Code of Maryland Regulations

⁵ To be crystal clear, Baccus was correct: the Initial Report of the substituted hearing examiner failed to discuss Baccus’s witnesses on the first day of hearings. The question before this Court, however, isn’t about that first mistake, but rather whether the corrections made after it was brought to the substituted hearing examiner’s attention were sufficient. For the reasons discussed above, we hold that they were.

⁶ Worse still from Baccus’s perspective, the Supplemental Report looked very similar to the Initial Report and made the same recommendations, suggesting to Baccus that his witnesses still had not really been considered. Although we note that the substitute hearing officer should have avoided allowing these appearances, they are not the proper subject of this appeal. Rather, we consider the legal sufficiency of the Supplemental Report.

explicitly holds that a substitute Administrative Law Judge (ALJ) may take over and use the existing record for their decision when the original ALJ is unable to continue presiding over the proceedings. COMAR 28.02.01.11C(3). Moreover, this Court has adopted a test to determine when and how ALJs may be substituted. *Citizens for Rewastico Creek v. Comm'rs of Hebron*, 67 Md. App. 466, 481 (1986) (adopting rule for the substitution of ALJs under the Maryland Administrative Procedure Act). Under that test, which we will call the *Rewastico Creek* test, we held that the substitution of an ALJ is permissible without a *de novo* proceeding when the original examiner is unavailable and either: (1) the case does not require the resolution of conflicting testimony or (2) if it is a case where credibility is involved, the parties agree to proceed without a *de novo* administrative proceeding. *Rewastico Creek*, 67 Md. App. at 481.

We agree with the State Board that, in the absence of an explicit rule governing substitution of hearing examiners, the *Rewastico Creek* test can and should be applied to determine the appropriateness of the substitution of hearing examiners within the PGCPS Office of Appeals. Moreover, applying the *Rewastico Creek* test to the facts presented, we hold that the substitution of hearing examiners was completely proper. First, the original hearing examiner who presided over the hearing was unavailable because he was no longer employed by the PGCPS Office of Appeals.⁷ Second, there was no requirement for the

⁷ Baccus also complains that there was no explanation offered regarding this substitution. We disagree. The record clearly shows that the reason a new hearing examiner replaced the original hearing examiner was that the original hearing examiner was no longer employed in the PGCPS Office of Appeals. A statement to this effect was provided

resolution of conflicting testimony. Resolution of conflicting testimony was not an issue because the substituted hearing examiner based his recommendation solely on Baccus's admissions. As a result, the *Rewastico Creek* test was satisfied, and the substitution of the hearing examiner was proper. We affirm the State Board's analysis.

In sum, we conclude that the State Board properly allowed the substitution of one hearing examiner for another and did not commit legal error.

II. WHETHER THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE STATE BOARD'S DECISION

We now turn to the second issue, whether there is substantial evidence in the record to support the State Board's decision affirming the decision of the Local Board to terminate.⁸ This question turns on whether, from the evidence in the record, "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Maryland Aviation Admin.*, 386 Md. at 571.

Here, the State Board relied exclusively on Baccus's own admissions for its decision. As to the first incident, Baccus admitted giving a student a side hug and commenting that "you are too pretty to be this upset." As to the third incident, Baccus admitted to commenting, "I know young ladies, they just have this birthmark, and then they end up giving birth" and that he would be "very upset, jealous, if [the student] messed up

as a footnote in the substituted hearing examiner's Initial Report as well as in his Supplemental Report.

⁸ As noted above, this Court reviews only the decision of the State Board. We do not review the decisions of the hearing officers, the CEO of PGCPs, or the Local Board, and as a result, we reject any arguments directed at them.

her life because she did not get [her] education.” Moreover, the State Board took into consideration evidence that Baccus had been counseled on how to appropriately interact with students multiple times without an apparent change in behavior. The State Board noted that the Local Board was clear that its decision was based solely on Baccus’s admitted conduct, and the State Board went on to find that the record supported the Local Board’s decision to terminate.

A reasonable mind reasonably could find that Baccus’s behavior, evidenced by his own admissions, violated PGCPS Regulations. Based solely on those admissions, we think that it is clear that there was substantial evidence to support the State Board’s decision to affirm the Local Board’s decision to terminate Baccus.

Baccus contends that more evidence should have been considered and disagrees with how the evidence was weighed. We emphasize that this Court does not reconsider evidence, but instead defers to the agency’s factfinding if it is supported by substantial evidence in the record. *Maryland Aviation Admin.*, 386 Md. at 571. The State Board made its decision based on Baccus’s admitted conduct. Because there was substantial evidence to support Baccus’s termination, the fact that the State Board was not persuaded by additional evidence or testimony does not mean it abused its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**